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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,695	08/06/2001	George Johan Peter Britovsek	01435.0121	8053
7590 08/09/2004 Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER LEE, RIP A	
			ART UNIT 1713	PAPER NUMBER

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/921,695

**Applicant(s)**

BRITOVSEK ET AL.

**Examiner**

Rip A. Lee

**Art Unit**

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 22-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 20, 24, 25, 27-29 and 42 is/are rejected.
- 7) ☒ Claim(s) 4, 8-19, 22, 26, 30-41 and 43-45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This office action follows a request for continued examination (RCE) under 37 § C.F.R. 1.114, filed on May 10, 2004. Applicants have amended claims 1, 2, 4-8, 12, 18-20, and 22. Claim 21 was canceled, and new claims 24-45 were added.

#### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-3, 5-7, 20, 24, 25, 27-29, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,688,733 to Renkema *et al.*

The prior art of Renkema *et al.* discloses a process in which olefin is contacted with an organometallic compound and a group 3-6 transition metal complex (claim 1). The organometallic is diethylzinc (claim 20). Olefins include C<sub>3</sub>-C<sub>7</sub>  $\alpha$ -olefins (claim 26). According to the inventors, the molar ratio between the organometallic and the transition metal complex lies

in the range of 1:1 to 1500:1, and preferably, this range is 2:1 to 300:1 (col. 4, line 16). One having ordinary skill in the art would have found it obvious to arrive at the subject matter of the present claims since it lies within the teachings of Renkema *et al.* The reference does not state specifically that a zinc alkyl chain growth mechanism is operative. However, in view of the fact that the catalyst components are essentially the same as those recited in the claim and that the process involves contacting the alpha-olefins with the claimed catalyst, one having ordinary skill in would find it obvious that chain growth products derived from zinc are being formed in active the catalyst mixture. Since the PTO can not perform experiments, the burden is shifted to the Applicants to establish an unobviousness difference. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

4. Claims 4, 8-19, 22, 26, 30-41, and 43-45 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The general subject matter of claim 3 would be allowable, pending appropriate response to the rejection under 35 U.S.C. 112, 2<sup>nd</sup> paragraph. As indicated previously, claim 23 is allowed.

#### ***Response to Arguments***

5. The rejection of claims under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,449,850 to Young *et al.* and WO 91/02707 to Mathys has been overcome by amendment.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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July 27, 2004



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